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# Coral Wireless

## Petition for Reconsideration

December 2014

CC Docket No. 96-45  
WC Docket No. 05-337

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# Coral Wireless Provides Innovative and Affordable Communications Services

- Coral Wireless has provided crucial services to the underserved in Hawaii since 2006.
- Coral, which operates as Mobi PCS, was the first wireless carrier in Hawaii to offer:
  - Unlimited Calling;
  - Low Flat Rates;
  - No Contracts; and
  - No Credit Checks
- Coral is the only locally-based provider serving the State of Hawaii.
  - Employees own 20% of Coral
- The Hawaii PUC designated Coral as a Competitive Eligible Telecommunications Carrier ("CETC") in February 2007 for the purpose of receiving universal service support.



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# Applicable Law Requires that Coral's Petition Be Granted

- USAC, through an independent auditor, commenced a routine audit of line counts that Coral had submitted using FCC Form 525.
- The audit concluded when the independent auditor disclaimed its opinion because the FCC's rules on revenue generation were ambiguous.
- Without initiating a new audit (or even finalizing the previous audit), USAC's Internal Audit Division ("IAD") notified Coral that it would offset support without:
  - providing Coral with a draft or final copy of the audit report underlying its decision;
  - explaining why the independent auditor had been wrong to conclude that the FCC's rules on revenue generation were ambiguous (notably, the FCC has since clarified its rules in favor of Coral's position);
  - permitting Coral to respond to the IAD's conclusions; or
  - including Coral's response to the IAD's conclusions in the final audit report as required by law.
- The Bureau subsequently denied Coral's Request for Review of the IAD's unlawful actions (the "Order") based on a single ground that (a) had not been raised at any point in the underlying proceedings and (b) had no basis in fact.
- The Order must be reversed as procedurally improper and factually incorrect.

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# No Valid Audit Supports the Recovery of Funding from Coral

- USAC, through use of an independent auditor, commenced a line count audit concerning the accuracy of Coral's Form 525 line counts in December, 2008.
- The auditor initially concluded that Coral was underpaid by around \$[REDACTED].
  - Coral *was* underpaid, but not for the reason on which the auditor based its conclusion, so Coral brought the error to the auditor's attention.
- The auditor later concluded that Coral had over-reported [REDACTED] lines based on a misinterpretation of a wireline rule.
  - Coral explained to the auditor that the wireline rule did not apply to Coral, and even if it did, the auditor had misinterpreted the rule to conclude erroneously that the [REDACTED] lines at issue were not generating revenue.
- Upon receiving Coral's explanation, the independent auditor disclaimed its opinion because the FCC's rules regarding revenue generation were ambiguous (the FCC has since clarified its rules in favor of Coral's position).
- In light of the independent auditor's decision to disclaim its opinion, no further actions to verify the accuracy of Coral's line counts were undertaken.

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# USAC Sought to Recover Support Without Conducting a New Audit

- Inexplicably, the IAD subsequently notified Coral that it had evidence to support an "updated finding" that certain lines were not revenue producing, and therefore planned to recover approximately \$[REDACTED] in support previously provided to, and used by, Coral for the benefit of residents of Hawaii.
  - The IAD never responded to Coral's request for an opportunity to review the "updated findings" to determine on what grounds the decision stood, as required by law.
- In response Coral requested that USAC either:
  - Rescind its decision; or
  - Grant Coral an opportunity to review and respond to the basis for the decision as was Coral's right under applicable law.
- Out of concern that USAC would again ignore Coral's request, Coral asked USAC, in the alternative, to treat Coral's response as an appeal of USAC's decision.
- USAC treated Coral's request as an appeal, which it summarily denied, citing only the disclaimed audit opinion as the basis for its decision.



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# USAC Sought to Recover Support Without Conducting a New Audit

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- In response Coral requested that USAC either:
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# The Bureau Based its Denial of Coral's Request for Review on a New Ground

- Coral filed a Request for Review of USAC's decision with the Bureau.
- Apart from the irreparable procedural irregularities and errors, Coral's request focused solely on the one substantive issue discussed in the underlying proceeding: whether the [REDACTED] lines at issue were revenue producing.
- The Bureau denied Coral's Request for Review based on a single ground: that Coral did not provide telecommunications services to its customers during the 60-day period prior to disconnection for non-payment because allegedly no calls during this period were routed to the destination of the caller's choice.
- The issue of whether Coral was providing telecommunications services, or even the actual routing of calls, was not pending before the Bureau, and it had never been addressed, or even considered, in the underlying audit proceeding.
- The sole substantive issue pending before the Bureau was resolved in Coral's favor in the same Order, albeit with respect to the request for review of another party.

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# The Order is Irreparably Flawed

- The Order is based solely upon a ground that had not been raised by Coral in its Request for Review or in the underlying audit proceeding.
- The Order is based solely on the false conclusion that Coral had not provided any telecommunications services using the [REDACTED] lines at issue because supposedly no calls made on these lines were routed directly to the telephone number dialed.
- The errors in the Order -- which cannot be cured by a Commission order addressing Coral's Petition -- require the Commission to reverse the Order.
- At most, the Commission could direct USAC to initiate a new audit, but this would merely waste more public resources because Coral in fact reported fewer lines using FCC Form 525 than the number of lines for which it is entitled to receive support even excluding all lines during the 60-day period before disconnection.

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# The Order Is Impermissibly Based Solely Upon a New Ground

- The Bureau exceeded the permissible scope of review by considering an issue that:
  - had never been raised, explicitly or implicitly, by Coral, USAC, or the independent auditor in the underlying proceeding or on the record;
  - Coral had not raised in its Request for Review; and
  - Coral had never been given the opportunity to address.
- The allegation upon which the Order is based was unknown and unknowable to Coral even through the exercise of ordinary diligence.
  - The only issues before the Bureau involved the procedural irregularities in the underlying proceeding and whether the ■ lines at issue were revenue generating.
- The Bureau lacks the authority to reopen every potentially relevant issue in its consideration of a request by a party to review certain issues.
- Informal adjudication procedures also require notice and an opportunity to comment upon all relevant evidence before an agency.

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# The Order is Based on False Assumptions that Lack Record Support

- The Order is based solely on the false assumption that Coral did not provide telecommunications services to its customers during the 60-day period before disconnection because no calls were routed directly to the number dialed.
- Nothing in the record supports the Bureau's allegation that Coral did not provide telecommunications services to its customers during the period before disconnection.
- The Order improperly assumes that during the period before disconnection:
  - Coral rerouted every non-emergency call to customer care;
  - None of Coral's customers consented to the rerouting of calls to customer care; and
  - None of Coral's customers wanted to call customer care.
- The Order could be upheld only if *none* of Coral's customers had the *possibility* of placing *any* calls to his or her chosen destination in the period before disconnection.
- However, the record demonstrates that *all* of Coral's customers could place calls to the end point of his or her choice at all times prior to disconnection.

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# Every Call Was Routed in Accordance With Each Customer's Choice

- Coral's terms *permitted*, but *did not require* Coral to route all non-emergency outbound calls to customer care while lines were in suspend status.
- Every Coral customer consented to the terms for Coral's services.
- Therefore, every customer agreed to the routing of calls pursuant to the terms.
- So, even if Coral routed every non-emergency call during the period at issue to customer care, the calls would in fact have been routed to each customer's chosen destination.
- The fact that certain customers may have forgotten that they agreed to the rerouting does not make their choices any less valid or enforceable.
- Routing to customer care pursuant to accepted terms is far more customer friendly, particularly to underserved customers, than immediate suspension or disconnection.

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# Coral Did Not Route All Calls To Numbers that the Caller Did Not Dial

- There is no evidence in the record to demonstrate that Coral rerouted all calls made using the [REDACTED] lines at issue to numbers that the customer did not dial.
- Coral's records demonstrate that, at a minimum, [REDACTED] calls made using the [REDACTED] lines at issue were terminated to the telephone number that the customer dialed without rerouting.
- For example, Coral terminated, without rerouting, at least [REDACTED] calls that calling parties had placed directly to customer care, and at least [REDACTED] calls that calling parties had placed directly to 911.



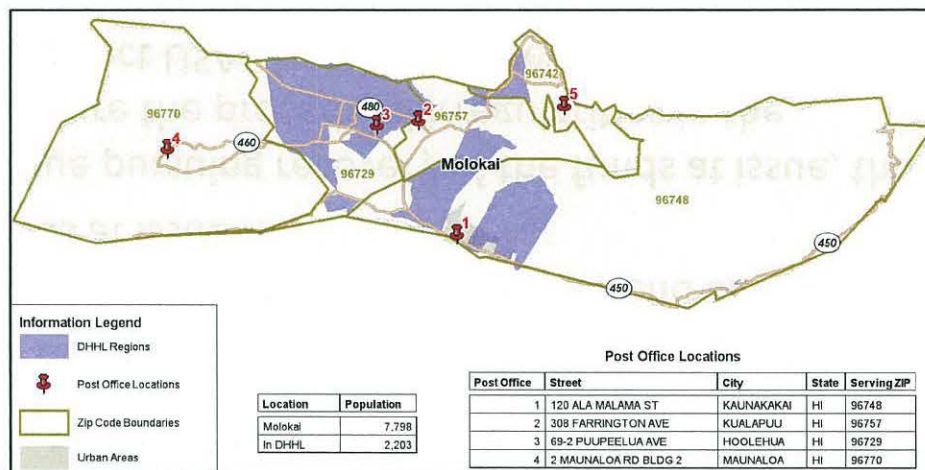
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# The Order's only Stated Basis is Legally Insufficient to Support the Order

- The Bureau merely cited the fact that Coral's policy *permitted*, but *did not require* Coral to reroute all non-emergency outbound calls during the period before disconnection.
- This statement is insufficient to support the Order because, as the Order itself explicitly recognized, Coral was not required to reroute all non-emergency outbound calls to customer care.
- The Order is silent with respect to Coral's treatment of inbound calls, which is not addressed, explicitly or implicitly, in the underlying record.
  - Neither the statutory definition of telecommunications service or working loops requires the provision of two-way service.
  - If service providers could avoid common carrier regulation by providing only one-way services, it is difficult to imagine that many common carriers would exist.

# Coral's Line Counts Were Conservative

- Even if the lines at issue were excluded, Coral would still be entitled to receive more universal service support than it actually received because Coral substantially underreported the lines for which it is entitled support.
- Statistics for September 2006 line count reporting:
  - 21,439 total subscribers
  - 15,381 subscriber billing addresses geocoded (72% of total)
  - 6,058 subscribers not geocoded
    - PO Box addresses and Unique Hawaii addressing
  - 653 lines reported in HHL areas (3% of total base)
  - 3% extrapolated over 6,058 subs not geocoded = 185 potential more subs in HHL not reported



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# Coral's Petition Should Be Granted

- The irreparable errors in the Order require its reversal.
- Coral respectfully urges the Commission to reverse the Order and end all efforts to recover the universal service funds at issue from Coral.
- If the FCC instead chooses to continue pursuing recovery of the funds at issue, the only means by which the FCC could cure the procedural irregularities in the underlying proceeding would be to direct USAC to initiate a new audit.
- Initiating a new audit would not serve the public interest, because Coral has substantially underreported the total number of lines for which it is entitled to support, even if all lines during the 60-day period before disconnection are excluded.
- For this reason, initiating a new audit would only serve to:
  - Waste taxpayer funds;
  - Impose additional unnecessary costs; and
  - Result in an audit which demonstrates that Coral actually received less support than it was in fact entitled by law to receive.

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